

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELAGE LANDEN FINANCIAL	:	
SERVICES, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
TRITEC OFFICE EQUIPMENT, INC.,	:	NO. 00-4715
Defendant.	:	

MEMORANDUM AND ORDER

Schiller, J.

January 10, 2001

This court issued a Default Judgment in the above-captioned matter on December 12, 2000, after Defendant TriTec Office Equipment failed to respond to Plaintiff's complaint, which was served on TriTec on October 2, 2000. Before the court today is Defendant's Motion to Vacate the Default Judgment. For the reasons set forth below, I decline to grant Defendant's Motion.

I. BACKGROUND

In July of 1992, Tokai Financial Services ("Tokai"), the predecessor in interest to Plaintiff De Lage Landen ("DLL"), entered into an agreement with Defendant TriTec, a vendor of office equipment. Under the contract Tokai agreed to fund leases of TriTec's customers by purchasing equipment from TriTec on behalf of those customers. TriTec agreed that the leases it entered into with its customers would be "executed by an authorized signatory and the signature

is genuine in all respects.” Defendant’s Memorandum in Support of Motion to Vacate Default Judgment, Exh. A at 2.

In September of 1999, Tokai agreed to finance two leases of equipment entered into between TriTec and the Sheet Metal Workers’ International Association (“SMWIA”). SMWIA made no payments on either lease. Upon investigating SMWIA’s failure to make payments, DLL determined that the signatories were neither employees nor authorized representatives of SMWIA. It was later discovered that a fraud had been perpetrated by the signatory of both leases, who absconded with the equipment. DLL brought this action for breach of contract based on TriTec’s misrepresentation that the equipment leases with SMWIA had been signed by an authorized signatory.

II. DISCUSSION

Under Rule 60(b) of the Federal Rules of Civil Procedure, a district court may set aside an entry of default judgment for mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the judgment. See Fed. R. Civ. P. 60(b). A district court must consider the following factors when deciding whether to vacate a default judgment: 1) whether lifting the default would prejudice the plaintiff; 2) whether the defendant has a meritorious defense; 3) whether the defendant’s conduct is excusable or culpable; and 4) the possibility of effective alternative sanctions. See Kauffman v. Cal Spas, 37 F. Supp.2d 402, 404 (E.D.Pa. 1999).

Defendant has failed to put forth a meritorious defense to DLL’s claim of breach of contract. TriTec admits that the signatures appearing on the lease agreements with SMWIA are fraudulent. TriTec defends against the charge of breach of contract by claiming that 1) it did not

intentionally misrepresent any facts as it dealt with an apparently authorized agent of the buyer; 2) Plaintiff's damages flow from the criminal acts of a third party; and 3) the contract with Plaintiff is unconscionable.

Defendant's first defense, that it did not intentionally misrepresent any facts, lacks merit.¹ Here, TriTec unambiguously warranted that the signatories were authorized to sign the lease on behalf of SMWIA. Plaintiff was entitled to rely on TriTec's representation that the signatures were valid. Whether or not the misrepresentation and breach were intentional is irrelevant to a claim of breach of contract.

TriTec's second defense, namely that the criminal activity of an intervening third party deprived DLL of its contracted-for payments, similarly falls short of providing a meritorious defense.² As is the case with TriTec's first asserted defense, Plaintiff was entitled to rely on TriTec's assertions under the contract that the signatories were authorized representatives of SMWIA.

Defendant's unconscionability defense also fails. Contract clauses are considered unconscionable only where an absence of meaningful choice on the part of one party to the contract is paired with contract terms that are unreasonably favorable to the other party. See Metalized Ceramics for Elec., Inc. v. Nat'l Ammonia Co., 663 A.2d 762, 765 (Pa. Super. Ct. 1995). While the contract at issue was prepared by the Plaintiff, TriTec is a sophisticated corporation doing business as a vendor of office equipment and it freely entered into the contract

¹Defendant has failed to cite any authority suggesting that its lack of intent to mislead is a sufficient defense to a breach of contract claim. See E.D. Pa. R. Civ. P. 7.1(c).

²Defendant has also failed to support its second proposed defense with any citations. See id.

with Tokai. There is no sign of either an absence of meaningful choice on the part of TriTec or terms that are unreasonably favorable to the Plaintiff.

An Order follows.

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TRITEC OFFICE EQUIPMENT, INC.,	:	
Defendant.	:	NO. 00-4715

ORDER

AND NOW, this 10th day of January, 2001, upon consideration of Defendant's Motion to Vacate Default Judgment (docket number 7-1) and Plaintiff's Brief in Opposition thereto, it is hereby ORDERED that Defendant's Motion is DENIED.

BY THE COURT:

Berle M. Schiller, J.